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ABSTRACT

Thirty-one academic publishers of stand-alone software and book/disk packages were surveyed to determine whether publishers have addressed the copyright issues inherent in circulating these packages within the library environment. Twenty-two questionnaires were returned, providing a 71% return rate. There were 18 usable questionnaires. Publishers were asked about their perceptions regarding the copyright status of the two packages, whether they view the circulation of the materials by libraries as a threat to the products' copyright, and whether they address this issue by offering libraries special site-license agreements for the circulation of both stand-alone software and book/disk packages. They were also questioned as to whether the size of the library market in terms of revenue would have any effect on their decision to create special site-license agreement for libraries. Results indicated that the majority of publishers do not differentiate between these items in terms of copyright status; they perceived the unprotected circulation of software product among library patrons pose a threat to copyright. Eleven respondents viewed the circulation of stand-alone software as a threat regardless of the presence of a site-license agreement; 44% felt that book/disk packages should circulate. It was found that most publishers do offer special site-license agreements for the computer lab market. Generally, it appeared that if libraries were to approach those publishers whose products they buy regularly and show a need for special agreements, publishers would consider working with them. Eight tables present survey information. The questionnaire is included in the appendix. (Contains 12 references.) (AEF)

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Software, Copyright, and Site-License Agreements: Publishers' Perspective of Library Practice

A Master's Research Paper submitted to the
Kent State University School of Library and Information Science
in partial fulfillment of the requirements
for the degree Master of Library Science

by

Stephanie K. Happer

August, 1995

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

ABSTRACT

To determine whether publishers have addressed the copyright issues inherent in circulating book/disk packages within the library environment, 31 academic publishers of stand-alone software and book/disk packages were surveyed. Publishers were asked about their perceptions regarding the copyright status of these two packages, whether they view the circulation of these packages by libraries as a threat to the products' copyright and whether they address this issue by offering libraries special site-license agreements for the circulation of both stand-alone software and book/disk packages. Publishers who do not currently offer libraries special site-license agreements were asked whether they would consider either amending other agreements or devising special site-license agreements for libraries. Publishers were further asked whether the size of the library market in terms of revenue would have any effect on their decision to create special site-license agreement for libraries. Results are presented and discussed.

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INTRODUCTION

The issue of intellectual property rights and the protection of copyright is an important one for libraries. Although protected in part by the "fair-use" provisions of section 107 and the library provisions of section 108 of the Copyright Act of 1976, libraries are becoming increasingly responsible for violations due to the growing number of new formats and media types now available. In September 1994, *Library Journal* invited two experts to debate the issue of whether current copyright law is appropriate for the new technologies found in libraries. At present "publishers are fearful that their control of intellectual property will be compromised by the ease of electronic access. Librarians are struggling to define the concept of "fair-use" and how it and the rest of the copyright laws apply to digital information" (Risher and Gasaway 1994, 34). Librarians are currently involved in committee discussions with Commissioner Bruce Lehman, Chair of the Working Group on Intellectual Property Rights of the White House Information Infrastructure Task Force. They are attempting to defend fair-use provisions in light of increasing concern over intellectual property rights on the information superhighway.

While librarians rightfully defend "fair-use" provisions, libraries have been disappointingly lax in enforcing current copyright law as it applies to many of the new technologies. In 1991, Stackpole conducted a survey of 50 special libraries to

seek information regarding (in part) "whether libraries were employing any special procedures in the procurement of software that do not normally apply to books and other traditional library materials, specifically, were they obtaining site licenses or engaging in other negotiated agreements." (Stackpole 1991, 162) With regard to libraries that circulated commercial software, Stackpole found that "most libraries apparently believe they are operating within copyright restrictions without making any special arrangements with publishers since only between one-fourth and one-third have entered into site licenses or negotiated agreements with publishers" (Stackpole 1991, 165).

The problem presented by circulating stand-alone software (that is, software that is complete in and of itself, and does not require any print material, other than user documentation, to impart information) is exacerbated by the increasing number of products being published that combine both a book and software that is vital to the content and understanding of the print material. With both items codependent, circulation of either the software alone or the print material alone would hinder the communication of information.

There are several ways a publisher may package book-borne software. The software may be placed in an envelope inside the front or back cover, it may be slipped between the pages of the print material, or it may be placed outside the book and then shrink-wrapped for protection. Many of these packages are academic or instructional in nature and many academic books about

software are accompanied by diskettes. Unlike stand-alone software whose site-license agreements may be negotiated to meet the needs of various markets, book-borne diskettes enter the library tied to a single copy of print material. Sometimes these items do not have accompanying site-license agreements. Libraries may look to their professional associations for advice.

ALA guidelines suggest that if the book-borne software is validly licensed (i.e. the software has been licensed and not sold with appropriate accompanying terms and agreements), "a careful reading of the license is in order. If the license appears to prohibit any ordinary library uses, the software should not be purchased or, alternatively, the producer could be contacted in order to amend the agreement" (Reed 1987, 48).

The Special Libraries Association guidelines published in 1994 also support this approach. "Upon receiving software with an unacceptable license agreement, the librarian can alter the form by marking out terms that are unduly restrictive or unworkable and inserting new ones. It is also useful to initial each change. . ." (Gasaway and Wiant 1994, 123). The SLA guidelines interpret Section 109 of the Copyright Act as protecting nonprofit libraries who lend software as long as the diskettes bear a warning of copyright law as promulgated by the Register of Copyrights. The guidelines go on to warn that nonprofit libraries may not loan software without either a license agreement that so permits, or, express permission from the holder of the copyright (Gasaway and Wiant 1994, 126).

Despite these guidelines, book/disk packages are often processed as a "book," without thought given to the circulation of the accompanying software and, therefore, without software warnings attached or special site-license agreements negotiated. The result is that copyright issues relating to the circulation and duplication of the accompanying software may be overlooked.

There are several reasons why librarians, like most everyone else, are confused about the status of the software within these book/disk packages and are unclear as to how they should address the circulation status of the packages. First, not all of these packages carry any kind of site license-agreements; therefore, the status of the software is questionable. Second, site license-agreements may vary from item to item and from publisher to publisher. Third, organization-wide negotiations for stand-alone software products are often conducted by a separate department within the library (Management Information Systems (MIS),for example); librarians, therefore, may not be aware of the problems inherent in software circulation.

Those libraries that do address the issue of book/disk packages take very different approaches. Some librarians have been known to remove the software and circulate the book without it rather than deal with negotiating site-license agreements; others allow the software to circulate with the book without accompanying software warnings or in checking with the copyright holder regarding the terms and conditions of the license agreement; still others go so far as to resist purchasing these

packages for fear of unwittingly violating copyright law. In so doing, this latter group of librarians allow their collection practices to be adversely affected by packaging issues and the confusion surrounding copyright law (Quint 1989a, 86-87).

A review of the literature shows very little research on software circulation and the problems inherent with this new technology and its packaging. Some columns, papers, and editorials discuss individual library policies; but there has been no systematic attempt to address the issues of the inconsistencies in site-license agreements and the absence of uniform publisher positions. Research pertaining to the problems of circulating book/disk packages is not found in the literature at all.

Given that libraries are becoming increasingly vulnerable to copyright infringement charges (although there have been no court cases to date), I conducted a survey of publishers currently producing print/disk packages to determine whether (a) publishers differentiate between stand-alone software and print/disk packages, (b) publishers take the position that stand-alone software and print/disk packages can or should be treated in the same manner within the library environment, (c) any publishers currently address the issue of circulating print/disk packages by providing special site-license agreements for libraries, and (d) if publishers do not provide special site-license agreements for libraries, whether they would consider devising a site-license agreement for the circulation of these packages by libraries.

LITERATURE REVIEW

A literature search was conducted in several print indexes and online databases including *Library Literature*, *Library and Information Science Abstracts (LISA)*, *Education Resources Information Center (ERIC)*, *CARL UnCover*, *The Bulletin Board for Libraries (BUBL)*, *General Periodicals ASAP*, and *ABI/Inform*. Terms used in the search strategies included "copyright and publishers," "licensing agreements and software," "site-license agreements" and "intellectual freedom and software."

As mentioned in the introduction, there is very little research regarding the issue of software circulation and libraries. Many articles, columns, and editorials discuss individual guidelines and professional association guidelines and share specific library policies and task force recommendations; many present suggestions and outline steps to ensure that libraries formulate and follow appropriate policy (Reed, 1987; LaRue, 1991; St. Lifer and Rogers, 1994; Norman 1993; Risher and Gasaway, 1994; Jensen 1992). Others articles look at the issue of copyright in terms of physical access to both software and hardware within the library (see for example Bennet, 1994). Case studies of library policies on circulating software address issues such as software definition, acquisition, cataloging and access, circulation, and preservation and protection (Beaubien, et al 1988; Stackpole 1991).

One exception to this type of literature is Stackpole's 1991

research study in which she surveyed special libraries and their individual approaches to acquiring and circulating software. She concludes that the problems of site-license agreements and software circulation create confusion within the library market and that not enough libraries are appropriately addressing the issue of copyright and site-license agreements. Indeed, of the 21 libraries providing patron access to software "only two libraries could say for sure that they had obtained site-licenses before making software available to users" (Stackpole, 167). Libraries did, however, attempt to restrict duplication of the software they circulated. "Libraries circulating commercial software were found on the whole to be making efforts to protect it from copying" (Stackpole, 167). The two most popular means were by using copy-protected diskettes and by user agreements between the patrons and the library.

ALA software guidelines state that "libraries generally will not be liable for infringement committed by borrowers" (Reed 1987, 48). Nevertheless, libraries are technically responsible for upholding copyright protection, both legally and ethically. Therefore, ALA recommendations for loaning software include notifying publishers on the signed agreement of the intended circulation of the software as well as attaching copyright notices to all circulating products (Reed 1987). The SLA guidelines take the same position. Unfortunately, Stackpole's findings support the general perception that libraries, despite these recommended policies, may not be doing all they could to

protect themselves from charges of copyright infringement and violation.

Only one author was found who addressed the problems presented by book/disk packages within the library environment (Quint, 1989a, 1989b). In a two-column series in Wilson Library Bulletin, Barbara Quint outlines the issues involved in circulating software with books, discusses the discrepancies between most site-license agreements, and notes the ignorance of publishers sales representatives of the issue. She points out that the natural friction between publishing and library policies could be alleviated if librarians would acknowledge that publishers and authors have a right to compensation and if publishers would recognize the library market as idiosyncratic and be willing to address it accordingly. Quint states an important distinction about the type of software that generally accompanies book titles and indicates why some of the accompanying software requires copyright protection.

> A line of distinction. . . lies in how the computer software will be used. If the software merely serves to illustrate a text, if it has no independent value outside of its instructional use ... then it seems that no more control should be exercised over the computer diskette than over the printed book ... But when the book serves the diskette, when the diskette carries programs or information of independent value and utility, when users can copy the diskette and discard the book and still have a useful product, then the situation reverses (Quint 1989b, 74).

This distinction is important because there is often an impression that the software in these book/disk packages has no value outside the book and therefore does not require protection.

While that was certainly the case with early software development, the situation is rapidly changing within the college textbook market. The software is now fairly sophisticated and holds information of value in and of itself; hence, the growing need for copyright protection.

Publishers have for years recognized the idiosyncratic nature of the academic lab setting and have created special site-license agreements for computer labs in which several copies of the software are required for several machines or where there is wide student access to a school network. Could publishers produce something similar for book/disk packages within the library market?

This research explores whether publishers have begun to address the specific problems inherent in the library market, if book/disk packages can be treated in the same manner as stand-alone software; and if it might be possible for publishers to consider the idea of providing a model site-license agreement for libraries that would address the circulation and duplication problems inherent in the idiosyncratic nature of book/disk packages.

METHODOLOGY

The research looks at whether publishers have addressed the problems inherent in circulating book/disk packages within the library environment and, if not, whether publishers would

consider creating a model agreement for the library market similar to those now offered to computer labs in the academic and school environment.

A 22 item questionnaire was sent to publishers that publish both stand-alone software and book/disk packages. Academic publishers have produced book/disk packages for years and most textbook publishers have produced special site-license agreements for computer lab settings.

The survey was mailed to a sample of 31 academic publishers who publish both stand-alone and book/disk packages for the academic market. For the purpose of this study, stand-alone software is defined as software that is complete in and of itself and does not require any print material (other than user documentation) to impart information. Book/disk packages are defined as software that accompanies print material and that contains information critical to the understanding of the print material; hence circulation of either the software alone or the print material alone would hinder the communication of information.

The sample resulted from the merging of 2 separate lists from Literary Marketplace, the directory of the American book publishing industry. The first is a list of publishers who produce microcomputer software, and the second is a list of publishers who produce college-level textbooks for classroom use. Those publishers who appeared in both lists received the questionnaire. As these lists cannot be considered

comprehensive, the resulting compilation represents a sample of the population of academic publishers who publish both stand-alone software and book/disk packages. The reasons for identifying these publishers are that (a) college textbook publishers produce book/disk packages, (b) computer software publishers represent stand-alone software, and public and academic libraries do buy textbooks for their collections (although some academic libraries may not purchase texts being used on campus in any given semester).

The questionnaires were sent to the Directors of Marketing. In college textbook publishing, the copyright is usually held by the publisher; therefore, the rights of the publisher may be amended by authorized personnel. Directors of Marketing often have the authority to negotiate site-license agreements with various marketplaces. Usually the agreement is a boilerplate approved by the publisher's legal department, but authority to change certain clauses at the discretion of the publisher often lies with the marketing department in order for them to meet individual market needs.

The 22 item questionnaire addressed the following research questions:

1. Do academic publishers who publish stand-alone and book/disk packages differentiate between these items in terms of copyright restrictions and library circulation? (Questions #5, 6, & 7)

2. Do academic publishers who publish stand-alone and book/disk packages expect these packages to be treated in the same manner within the library environment? (Questions # 7, 9, 10, 11, & 12)

3. Do academic publishers who publish stand-alone and book/disk packages perceive the circulation of book/disk packages within libraries as a threat to copyright protection? (Question #8)

4. Do academic publishers who publish stand-alone and book/disk software provide special site license agreements for computer labs within the academic market? (Question # 13 & 14)

5. Do academic publishers who publish stand-alone and book/disk software perceive similarities between the special requirements of the computer lab and the special requirements of the library? (Question #15)

6. Do academic publishers who publish stand-alone software and book/disk packages currently address the issue of circulating book/disk packages by providing special site-license agreements for libraries? (Question #16 & 17)

7. If publishers do not offer special site-license agreements, would publishers consider devising a model site-license agreement for the circulation of these packages in libraries similar to the ones they have for software labs in school and academic environments? (Question # 18, 20 & 21)

8. Does the size of the library market in terms of annual revenue affect a publisher's position with regard to devising special licensing agreements for libraries? (Question # 1, 2, 3, 4 & 19)

ANALYSIS AND DISCUSSION OF DATA

Surveys were sent to 31 publishers across the country. After a follow up mailing, a total of 22 questionnaires were returned providing a 71% return rate. Of these, 1 was too inconsistent to use and another 3 were unusable due to the fact that the publishers indicated that they did not sell any software product to libraries. This left 18 usable questionnaires, or 64% (18/28) usable returns from publishers who met the criterion of selling software to libraries.

Of the 18 respondents, 14 publish both stand-alone software and book/disk packages, while 2 publish only stand-alone and 2 publish only book/disk. (See Table 1)

TABLE 1

Number of publishers publishing/selling stand-alone and/or book/disk software to libraries

	Publishes both	Stand-alone only	Book/disk only	Total
Publishers	14	2	2	18

As to whether publishers perceive the circulation of stand-alone software among library patrons as a threat to copyright, of the 18 respondents, 11 believe the circulation of stand-alone software poses a threat, while 5 believe the circulation of software poses a threat unless there is a special site-license agreement in effect. Only 1 publisher views the circulation of software as not posing a threat to the copyright, and 1 did not respond.

These responses would seem to indicate that virtually all publishers perceive their products' copyright to be potentially threatened by the circulation of stand-alone software by libraries; further, a majority believe that even a special site-license agreement does not mitigate the vulnerability of software to copyright violation. This position could result from the fact that, unlike a book, software is very easily (and very often) illegally duplicated. The minority (28%) who feel their product would be protected by a special site-license appear to accept that software can circulate among library patrons and the copyright still be protected. This position might indicate that in recognizing the vulnerability of their software to mass

duplication by patrons, some publishers would be willing to fashion a special site-license agreement in recognition of the idiosyncratic nature of this market and allow for the legal duplication of software by patrons.

When asked whether there is a distinction between stand-alone and book/disk packages in terms of copyright status and library circulation, it was found that of the 18 publishers, 14 see the copyright status between both products to be the same, while only 4 see a distinction. The 4 publishers who perceive a distinction in status stated that they saw the software in book/disk packages as being peripheral to the book and therefore, of no inherent value in and of itself. This minority position could be due to the nature of the particular product published by these individual publishers; that is, the accompanying software may be study guides or answer keys, thus ancillary to the book product.

The majority of respondents, however, view the software that accompanies their books to be of inherent value in and of itself and, therefore, of equal status to stand-alone software. It appears, then, that the large majority of publishers view all software to hold the same copyright status regardless of its packaging. (See Table 2)

TABLE 2

Publishers' views of copyright status of stand-alone and book/disk software in terms of circulation among library patrons

	Status Same	Status Different	Total
Circ a threat	9	2	11
Circ threat w/o SLA	3	2	5
Circ not a threat	1		1
No answer			1
Total			18

SLA = site-license agreement

Having established how publishers interpret the copyright status of book/disk packages, publishers were then asked whether libraries should be allowed to circulate book/disk packages among patrons in the same manner as books. Findings indicate that publishers are split on this issue. The 9 who feel book/disk packages should not circulate like books reflect the majority position that the status of these packages is similar to that of stand-alone software and, therefore, require protection from unlawful duplication. The group of 8 respondents who feel book/disk packages should circulate like books include the 4 publishers who previously equated the status between the two packages. 1 publisher did not respond. (See Table 3) These results might indicate that despite a perceived threat to the copyright of their product, some publishers, for reasons which are not clear, are not concerned about the violation of copyright by library patrons. One possible reason could be that they view

the number of patrons as potentially violating their copyright insignificant relative to the threat represented by their large markets.

TABLE 3

Publishers' views on whether book/disk packages should circulate among library patrons in the same manner as books

	Status Same	Status Different	Total
Should circ like book	4	4	8
Should not circ like book	9	0	9
No response			1
Total			18

Those respondents who answered that book/disk packages should not circulate like books were then asked what actions they would like libraries to take with regard to their circulation. Of the 9 who indicated book/disk packages should not circulate like books, 5 indicated that a special site-license agreement should be negotiated while 4 indicated that the software should be removed from the package before circulation. (See Table 4)

TABLE 4

Publishers who object to book/disk packages circulating like books and their view on how libraries should address their circulation

	Negotiate site-license agreement	Remove software prior to circulation	Total
Circ of book/disk packages a threat to copyright	5	4	9

That these 4 would like to see the software removed is surprising given the fact that they all consider the software to be vital to the book. Why a special site-license agreement would not be acceptable to these publishers is not evident, but it is possible that they do not believe site-license agreements alone can adequately protect the software from being copied illegally as it circulates among library patrons. In fact, these 4 respondents showed consistency by previously answering that they viewed the circulation of stand-alone software among library patrons as posing a threat to the protection of copyright regardless of the presence of a site-license agreement. (See Table 5)

TABLE 5

Comparison of publishers who view the circulation of stand-alone software by libraries as a threat to copyright and their position on the circulation of book/disk packages

	Do not allow B/D to circulate like book		Allow B/D to circ like book	Total
	Negotiate SLA	Remove Software		
Circ of stand-alone poses a threat	2	4	5	11

SLA = site-license agreement; B/D = book/disk package

In response to the question whether publishers currently offer special site-license agreements for computer labs within the academic market, findings indicate that most publishers are aware of the special needs of the academic computer lab and have addressed this market by offering site-license agreements which

provide permission to mass duplicate software. (See Table 6) Implicit here is that academic publishers will react to the special requirements of various markets and that academic computer labs are one market they have had to address.

Asked whether publishers perceive similarities between the special requirements of the computer lab and the special requirements of the library (i.e. the need for multiple duplication in the former and the need for multiple circulation, which could lead to duplication, in the latter), 12 perceive similarities, 3 perceive no similarities and 3 did not know. These results would indicate that the majority of publishers are aware of the fact that diverse markets exist, some of which have similar needs.

Of the 13 respondents who currently offer special-site license agreements to computer labs, 11 perceive similarities between the special requirements of the computer lab and the special requirements of the library. This could indicate that publishers who currently offer site-license agreements to computer labs may be willing to consider doing the same for the library market.

In response to the question whether publishers currently offer special site-license agreements to libraries for stand-alone software and book/disk packages, findings show that only a minority do. As none of the 5 publishers who offer site-license agreements returned a copy, it is unclear whether the agreements are written specifically for libraries, or whether standard site-

license agreements packaged with the products are later amended to meet specific library requirements. It is also possible that publishers feel they offer libraries appropriate site-license agreements when those standard licenses that accompany their products enter the library. This would be an interesting area for additional research.

TABLE 6

Comparison of publishers who have site-license agreements for labs with publishers who have site-license agreements for libraries

	Have SLA for library	Do not have SLA for library	Don't know for library	No response	Total
Have SLA for labs	3	4	5	1	13
No SLA for labs	2	2			4
Don't know for lab			1		1
Total					18

SLA = site-license agreement

Publishers who currently do not offer special site-license agreements to libraries were then asked if they might consider amending or devising a special site-license agreement for libraries; of the 6 publishers who do not currently offer special site-license agreements specifically for book/disk packages, 4 would consider devising a special site-license agreement, 1 would consider amending existing agreements and 1 did not respond. These findings would seem to indicate that, if made aware of

specific market needs, most publishers would be willing to respond in order to protect their copyright. 1 respondent pointed out, however, that many publishers license software from third parties. The implication here is that some licensing is out of the control of publishers so the original software vendor would need to be approached to address the issue of special licenses.

Findings pertaining to the size of the library market and a publisher's relative interest in devising or amending a special agreement indicate that the more important the library market is in terms of revenue, the more likely a publisher is to address the issue of special site-license agreements. (See Table 7)

TABLE 7

Publisher willingness to devise site-license agreements relative to the size of their library market (Market size defined by annual revenue)

	Would devise or amend	Would NOT devise or amend	Don't know	Total
Mkt. sig or very sig	5			5
Mkt. insig or very insig		6	4	10
Market neutral	1		2	3
Total	6	6	6	18

sig = significant; insig = insignificant

With regard to market size and sales efforts, only 2 of the 18 respondents maintain a special library sales force. The majority (15) use either a vendor such as Baker & Taylor, or

direct mail to market to libraries. Publishers who view the library market as significant or very significant also rate their sales efforts as significant or very significant. Conversely, publishers who said their library market was neutral, insignificant, or very insignificant also rated their sales efforts as neutral, insignificant or very insignificant. (See Table 8)

TABLE 8

Publishers sales efforts relative to the size of their library market (Market size defined by annual revenue)

	Sales effort sig or very sig	Sales effort insig, very insig or neutral	Total
Mkt. sig or very sig	5		5
Market insig or very insig		10	10
Market neutral		3	3
Total	5	13	18

sig = significant; insig = insignificant

CONCLUSIONS

Overall, these results indicate that the majority of publishers (78% or 14/18) who publish stand-alone and book/disk packages do not differentiate between these items in terms of copyright status. This majority perceive the unprotected

circulation of software product among library patrons to pose a threat to the copyright. This indicates that publishers feel that book/disk packages require the same protection from unauthorized duplication as stand-alone software.

61% (11/18) of the respondents view the circulation of stand-alone software to be a threat regardless of the presence of a site-license agreement, indicating, perhaps, that they feel these agreements to be generally worthless in deterring unauthorized duplication of software.

Given that publishers view the status between the two packages as similar, it is interesting to note that half (50% or 9/18) indicated that book/disk packages should not circulate like books, while 44% (8/18) felt they should; 6% had no response. This large minority apparently sees little threat from library patrons. This view could be due to the small number of library patrons relative to the size of the threat represented by their total market.

In determining whether publishers are reactive to special markets, it was found that most publishers do offer special site-license agreements for the computer lab market. 72% (13/18) of respondents offer special site-license agreement to labs, indicating their awareness of the special needs of particular markets and, a majority of respondents (67% or 12/18) see the special needs of the library as similar to that of labs. Despite this view, only 28% (5/18) of respondents currently offer special site-license agreements to libraries. These findings indicate a

potential willingness on the part of publishers to address a library's special needs. This supposition appears to be supported by the fact that of those publishers not currently offering special-site license agreements, 83% (5/6) of them would consider doing so by either amending current agreements or devising new ones. 1 (17%) did not respond.

In general, market size would appear to be a factor in seeking a response from publishers with regard to a special site-license agreement. Not surprisingly the research shows that if a market is of sufficient financial importance to a publisher, the publisher appears willing to respond by providing a special agreement; conversely, if a market generates little revenue for a publisher, the publisher indicated little need to respond. 100% (5/5) of those publishers who indicated that the library market was significant or very significant would consider either amending a current agreement or devising a special agreement for libraries; 60% (6/10) of respondents who indicated that the market was insignificant or very insignificant indicated that they would not consider devising special agreements and the remaining 40% (4/10) said they did not know.

One issue this research does not address is how publishers inform libraries of the nature of their product. Librarians use many sources of information other than publisher catalogs to place orders (book reviews, for example). Many librarians may be surprised, therefore, to find software accompanying certain product as this information was not made available when they

ordered. This places undue burden upon the library. If publishers appear willing to hold libraries responsible for protecting their products' copyright, then perhaps they should have an equal obligation to adequately inform libraries about the product they purchase.

Generally, however, it would appear that if libraries were to approach those publishers whose products they buy regularly and show a need for special agreements to accompany either stand-alone software or book/disk packages, publishers would consider working with them to generate agreements that would adequately protect the copyright of these products; by so doing, libraries would also protect themselves from any potential culpability due to the unlawful duplication of software by patrons.

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APPENDIX

The Circulation of Stand-Alone Software and Book/Disk Packages by Libraries

For the purpose of this questionnaire, the term product refers to either a book/disk package or a stand-alone software package. The term book/disk package is defined as a book, manual, print matter, etc., that is accompanied by computer diskettes which contain information essential to the print material and must, therefore, be used with the print material as a package. Stand-alone software is defined as software that is complete in and of itself and which does not require any print material (other than user documentation) to impart information.

1. Do libraries purchase your product?

   1. Yes_____ 2. No_____ 3. Not sure_____

2. How significant is the library market in terms of revenue? (Circle one)

   1. Very significant
   2. Significant
   3. Neutral
   4. Insignificant
   5. Very insignificant

3. How important is the library market in terms of your sales efforts? (Circle one)

   1. Very important
   2. Important
   3. Neutral
   4. Unimportant
   5. Very unimportant

4. How do you market your product to libraries? (Circle all that apply)

   1. We have a special library sales force
   2. We use our book representatives to also call on libraries
   3. We use a vendor (e.g. Baker & Taylor)
   4. We use direct mail advertising and catalogs
   5. We don't market to libraries

5. Do you publish stand-alone software?

   1. Yes___ 2. No____ 3. Don't Know ____

6. Do you publish book/disk packages?

1. Yes_____ 2. No_____ 3. Don't know_____

7. Do you enclose site-license agreements with both types of packages? (Circle all that apply)

1. Yes, we enclose them with stand-alone software packages
2. No we don't enclose them with stand-alone software packages
3. We sometimes enclose them with stand-alone software packages
4. Yes, we enclose them with book/disk packages
5. No, we don't enclose them with book/disk packages
6. We sometimes enclose them with book/disk packages

8. Many products are circulated by libraries. In your view, does the circulation of stand-alone software among library patrons pose a threat to the protection of copyright of the product?

1. No, the circulation of software among library patrons poses no threat
2. No, the circulation of the software poses no threat if a special site-license agreement has been negotiated
3. Yes, the circulation of software among patrons poses a threat to copyright protection.

9. In your view, is there a distinction between stand-alone software and book/disk software in terms of copyright protection and circulation by libraries?

1 Yes, there is a distinction
2. No, the copyright status between the two packages is the same

10. If you answered Yes to Question 9, what is the distinction?

_____

_____

_____

11. In your view, should book/disk packages be allowed to circulate in libraries among patrons in the same manner as books?

    1. Yes, book/disk packages should circulate like books
    2. No, book/disk packages should not circulate like books

12. If you answered No to Question 11, what actions would you like to see libraries take with regard to book/disk packages circulated by libraries?

    1. Libraries should negotiate a special site-license agreement to permit circulation
    2. Software should be removed from the book before it circulates
    3. Other _____

13. Do you currently offer special site-license agreements with special provisions for multiple duplication of diskettes to computer labs in school and academic settings?

    1. Yes____ 2. No ____ 3. Don't know _____

14. If you answered Yes to Question 13, do you offer these special site-license agreements for both stand-alone software and book/disk packages?

    1. We offer special agreements for stand-alone only
    2. We offer special agreements for book/disk packages only
    3. We offer special agreements for both stand-alone and book/disk packages.

15. Do you perceive similarities between the special requirements of the academic computer lab (i.e., the need for multiple copies) and the special requirements of the library (i.e., the need for multiple circulation)?

    1. Yes, there are similarities
    2. No, there are no similarities
    3. No opinion

16. Do you currently offer special site-license agreements to libraries that buy stand-alone software?

    1. Yes ____ 2. No _____ 3. Don't Know _____

17. Do you currently offer special site-license agreements to libraries that buy book/disk packages?

1. Yes _____ 2. No _____ 3. Don't know _____

18. If you answered No to Question 17, would you consider devising a special site-license agreement for libraries that circulate book/disk packages among their patrons?

1. Yes, we would consider amending existing agreements to meet the needs of libraries
2. Yes, we would consider devising a special site-license agreement for libraries
3. No, we would not consider either amending or devising an agreement for libraries.

19. Is the library market large enough in terms of your sales and revenue to justify amending or devising a special site-license agreement?

1. Yes, the library market is large enough to justify either amending our current agreements or devising a special site-license agreement.
2. No, the library market is not large enough to justify either amending our current agreements or devising a special site-license agreement.
3. Don't know.

20. Are you aware of any publishers that might have addressed the library market with special site-license agreements?

1. Yes _____ 2. No _____ 3. Don't know _____

21. If you answered Yes to Question 20, which publishers?

1. _____ 2. _____

22. If you have any suggestions or recommendations, please include them below. If you have a model agreement that might help address this issue, would you please enclose it with your questionnaire. Thank you.

_____

_____

ABSTRACT

To determine whether publishers have addressed the copyright issues inherent in circulating book/disk packages within the library environment, 31 academic publishers of stand-alone software and book/disk packages were surveyed. Publishers were asked about their perceptions regarding the copyright status of these two packages, whether they view the circulation of these packages by libraries as a threat to the products' copyright and whether they address this issue by offering libraries special site-license agreements for the circulation of both stand-alone software and book/disk packages. Publishers who do not currently offer libraries special site-license agreements were asked whether they would consider either amending other agreements or devising special site-license agreements for libraries. Publishers were further asked whether the size of the library market in terms of revenue would have any effect on their decision to create special site-license agreement for libraries. Results are presented and discussed.